



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/166505

PRELIMINARY RECITALS

Pursuant to a petition filed June 05, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on July 09, 2015, at Sheboygan, Wisconsin. The record was held open for 10 days for the Petitioner's representative to submit additional information. On July 16, 2015, additional information was submitted and the record was closed.

The issue for determination is whether the agency properly denied the Petitioner's PA request for Pediasure, an enteral nutrition supplement/replacement.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] by his legal guardian [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Lynn Radmer
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Sheboygan County. He is 7 years old and lives with his family. His primary diagnoses include autism, developmental delay, short stature, ADHD, asthma, and gastroesophageal reflux disease (GERD).
2. Petitioner's documented height on April 7, 2015 was 43.5 inches and weight was 43 pounds. Petitioner's height is at .64% for children his age and weight is at 6.35% for children his age. His BMI was 16.05 which is at 61.60% for children his age.
3. Petitioner was started on a diet consisting primarily of Pediasure at the age of 3. Petitioner can consume table foods and regular beverages.
4. A physician's progress note from April 7, 2015 reports that the Petitioner doesn't eat much due to ADHD medication. He eats macaroni and cheese, pizza and sometimes a banana. He eats small amounts. He drinks Pediasure 3x/day. He usually eats a breakfast of French toast and sausage and then takes ADHD meds. The physician's recommendations included continuing to offer Pediasure at the end of meals and trying other high caloric beverages if Pediasure is not covered. The physician also recommended not allowing Petitioner to sip on juice or Gatorade between meals. The physician noted that the Petitioner relies on Pediasure for about half of his caloric needs.
5. A physician's progress note from April 14, 2015 reports that Petitioner's diet is not well balanced. It states he is a picky eater and prefers snacks, carbs, fruits over vegetables and proteins. It notes his calcium intake appears adequate with 2 cups of lowfat lactose-free milk/day and juice is limited to 1 – 2 servings/week. Petitioner is lactose intolerant.
6. On April 30, 2015, the Petitioner's physician prescribed 8 oz. of Pediasure 3 times daily for a total of 24 oz/day.
7. On May 4 and May 20, 2015, the Petitioner's provider, Glander Prescriptions Plus, submitted PA requests on behalf of the Petitioner for Pediasure, 240 ml, 3x/day for 12 months.
8. The Petitioner's total daily caloric requirements are 1,000-1,200 calories/day.
9. On May 12 and 21, 2015, the agency issued notices to the Petitioner that the PA requests were denied.
10. On June 5, 2015, an appeal was filed on behalf of the Petitioner with the Division of Hearings and Appeals.

DISCUSSION

Medically necessary food replacement enteral and parenteral products can be an MA-covered service, subject to prior authorization. Wis. Admin. Code §DHS 107.10(1),(2)(c). Pediasure is a high calorie food replacement product. The code only allows for MA coverage of such a product if it is medically necessary and used for the treatment of severe health conditions, such as pathologies of the gastrointestinal tract or metabolic disorders. Additionally, as with all prior authorizations, the item or service must pass the generic prior authorization criteria found at §107.02(3)(e), which include the requirements that the item be medically necessary, appropriate, and cost effective.

The code requires that an authorized item must be medically necessary and cost-effective when compared to other treatments. There is also specific code language dealing with food products:

(4) NON-COVERED SERVICES.

[T]he following are not covered services:

...

- (r) Food;
- (s) Infant formula, ...
- (t) Enteral nutritional products that do not meet the criteria established by the department under sub. (2) (c) to verify medical need, when an alternative nutrition source is available, or that are solely for the convenience of the caregiver or the recipient.

Wis. Admin. Code §DHS 107.10(4) (2008).

The criteria established for enteral nutrition food supplement food supplement/replacement products are contained in ForwardHealth Update 2012-57. General purpose enteral nutrition products may be covered if a member has been diagnosed with one of the following:

- A severe swallowing disorder due to oral-pharyngeal tissue injury, trauma, excoriation, or structural deficit.
- Pathology of the gastrointestinal tract that prevents digestion, absorption, or utilization of nutrients that cannot otherwise be medically managed.
- Transition from tube feeding to an oral diet.

ForwardHealth Update No. 2012-57 (October, 2012).

The Update further states that ForwardHealth does not cover enteral nutrition products for the following:

- Boosting protein intake, weight reduction, body building or performance enhancement;
- Convenience or preference of the provider or member, or when an alternative nutrition source is available;
- Additive and enteral nutrition products under procedure code B4104;
- Food thickeners and enteral nutrition products under procedure code B4100

In addition, the Update specifies that ForwardHealth does not cover the oral use of enteral nutrition products for the following:

- Swallowing disorders that may lead to aspiration
- Swallowing or feeding disorders that are behavioral, neurological or psychological in nature (e.g. anorexia nervosa, bulimia, dementia, cognitive disorders, oral aversion and food preferences)
- Reduced appetite or anorexia
- Non-compliance with specialized diet (e.g. allergies, gluten free, lactose free, diabetes, renal)
- Mastication problems due to dentition problems (e.g. lack of teeth).

In this case, the Petitioner has no known swallowing disorder, GI condition or other physical disorder that prevents him from eating regular table foods and beverages. The Petitioner's family reported to the physician in April that the Petitioner's ADHD medication seems to cause him to have a poor appetite. The records also suggest that he might have an oral aversion to certain tastes or textures as a result of his autism. Further, the records document that he can eat some regular table foods such as macaroni and cheese, pizza, French toast and sausage and drink lactose free milk.

At the hearing the Petitioner's legal guardian testified that she has tried many different types of foods and beverages and has had the Petitioner at feeding clinics but the Petitioner remains a very picky eater. He does like Pediasure and will drink it 3x/day.

The Wisconsin Medicaid regulations and ForwardHealth guidelines are clear that Pediasure is not covered for the Petitioner. Specifically, it is not covered for members with reduced appetite or for members who have a personal preference for the product. In addition, though the Petitioner is a picky eater, there are some identified foods that he will eat and beverages other than Pediasure that he is reported to drink, ie lactose free milk. His BMI is appropriate for his age.

Based on the evidence provided, I conclude the agency properly denied the Petitioner's PA request for Pediasure.

CONCLUSIONS OF LAW

The agency properly denied the Petitioner's request for Pediasure.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

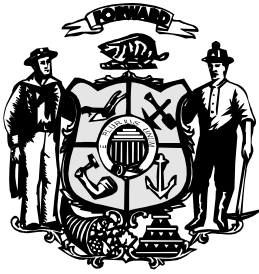
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 15th day of September, 2015

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 15, 2015.

Division of Health Care Access and Accountability